IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12846 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

HARIBHAI K JOSHI SINCE DECD. THRO HEIRS & L.RS.

Appearance:

1. Special Civil Application No. 12846 of 1994

MR YN RAVANI for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1-1/5

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 28/04/2005

C.A.V. JUDGEMENT

The present petition has been filed by the petitioner Gujarat State Road Transport Corporation under Article 227 of the Constitution of India challenging the

Award passed by the Labour Court, Rajkot in Reference (LCR) No.510 of 1990 dtd.21/6/1994, whereby the Labour Court quashed the termination order dtd.3/5/1990 passed by the petitioner Corporation against the respondent and directed the petitioner Corporation to reinstate the respondent workman on his original post with 50% back wages along with all consequential benefits within a period of 30 days from the date of publication of the Award in the Gazette. The Labour Court also directed the petitioner Corporation to pay cost of Rs.250/- to the respondent towards the costs of the reference.

2. It is the case of the petitioner that the respondent was working as Conductor at the Divisional Office at Bhuj under the petitioner. On 27/12/1988 when the petitioner was on his duty in Bus No.8599 which was plying from Kharasara to Anjar, checking was carried out by the checking squad and it was found that the respondent collected total fare of Rs.7/- from three adult passengers and a child passenger and did not issue ticket to them and additional cash was also found from the respondent. The checking squad made complaint report No.1746/105 on 4/1/1989 against the respondent and subsequently, chargesheet was given to the respondent on 3/2/1989. The respondent filed his reply to the chargesheet and show cause notice dtd.6/3/1989. The petitioner Corporation appointed Inquiry Officer who gave personal hearing on 29/4/1989 and 5/7/1989. At the end of inquiry, the inquiry officer came to the conclusion that the respondent is guilty of defalcation of the fund of the Corporation and his conduct is against Rule 7(A), 12(B) and 27 of the Standing Rules regarding Discipline of the petitioner Corporation and further the Inquiry Officer directed to issue a show cause notice dtd.2/12/1989 to the respondent to the effect that why the respondent should not be dismissed from service. Ultimately, the petitioner Corporation passed an order dismissing the respondent from service, against which the respondent approached the Labour Court and the Labour Court after hearing both the sides and considering the evidence on record, quashed the dismissal order passed by the petitioner against the respondent and directed the petitioner to reinstate the respondent with 50% back wages, against which the present petition has been filed by the petitioner Corporation.

3. It is pertinent to note that the respondent pursuant to the Award passed by the Labour Court, the respondent was reinstated in service by the petitioner vide order dtd.26/8/1994, but thereafter, respondent workman Haribhai K. Joshi expired on 5/9/2004 and

therefore, his heirs have been brought on record as respondent Nos.1.1 to 1.5 in this petition as per the order dtd.25/10/2004 passed by this Court in Civil Application NO.8633 of 2004. However, hereinafter the deceased respondent workman shall be referred to as the "respondent" for convenience.

4. Mr.YN Ravani, learned counsel for the petitioner Corporation has mainly argued that the impugned Award is illegal, arbitrary and not tenable at law and against the settled legal position and evidence on record. The labour court has passed the award ignoring the gravity of the misconduct. He has further argued that the Labour Court has believed the misconduct of the petitioner however, the Labour Court has wrongly exercised discretion under sec.11(A) of the Industrial Disputes Act; that the Labour Court has failed to consider the past record of the respondent. Consequently, it is argued that the impugned Award may be quashed and set aside. He has also reliance on the following citations;

[1] AIR 1992 SC 2188
[2] 1993(1) GLR 302
[3] 1986 (2) GLR 1143
[4] 1985 GLH 446 and
[5] 1995 (2) GLR 1028

5. On the other hand, Mr.Mukesh Rathod, learned counsel for the respondent workman has vehemently argued that the Award passed by the Labour Court is just, legal and proper and the same has been passed considering the evidence on record and while passing the Award, no error has been committed by the Labour Court; that the impugned Award well within its jurisdiction; that the present petition has been filed under Article 227 of the Constitution of India and under the Articles 226 and 227 of the Constitution of India, this Court has limited jurisdiction as per the settled law and hence this court may not interfere with the impugned award, more particularly when the Award is in consonance with the evidence on record and no error is committed by the Labour court while passing the impugned Award and this Court cannot re-appreciate the evidence; that in the inquiry no sufficient opportunity was given to the respondent; that no opportunity to cross examine the passengers of the bus whose statements were recorded by the checking squad was given; that no opportunity of defence was given to the respondent and the inquiry was nothing but eye wash.

5.1. Mr.Rathod has further argued that in the

chargesheet, no particulars about the past allegations were given, however, the inquiry officer terminated the service considering the past record of the respondent, and the respondent is prevented from making effective defence to that effect, which is against the principles of natural justice.

5.2. Mr.Rathod has further argued that as per the allegation, only 3.1/2 tickets were not given by the respondent to the passengers, the total fare of which comes to Rs.7/-. The respondent could not issue ticket as the bus was full of passengers and there were many passengers in the bus; that the alleged negligence of the respondent cannot be termed as misappropriation and defalcation; there was no such intention. In view of the negligence alleged to have been committed by the respondent, the punishment of dismissing the respondent from service is too harsh and against the principle of natural justice and the trial court has rightly passed the award considering all the aspect of the matter.

5.3. Mr.Rathod has further argued that the respondent was working since last 23 years as conductor and the labour court has considered the past record of the petitioner and the fact that for the negligence committed by the respondent in the past, the respondent was penalized. It is also argued that during the long span of service, minor negligence has happened which were not intentional. The Labour Court considering the past record of the respondent has granted only 50% back wages and not awarded full back wages, which amount to imposition of punishment upon the respondent.

5.4. Mr.Rathod has further argued that the Labour Court considering the evidence on record, come to the conclusion that keeping in mind the negligence of the respondent, the punishment of terminating the service of the respondent is harsh.

5.5. Mr.Rathod has further argued that so far as the additional money found from the respondent is concerned, no one can believe that any person may not have his own money. The personal money of the respondent was with the respondent and therefore, adverse inference cannot be drawn as the same is against the principles of natural justice.

5.6. Mr.Rathod has further argued that the citations on which the learned counsel for the petitioner has placed reliance, are not applicable, as the same are with regard to the misappropriation, whereas, in the present

case, the misappropriation is not proved, but it is case of negligence and the labour court has rightly considered the citations cited on behalf of the petitioner and has rightly passed the impugned Award.

5.7. Mr.Ratod, learned counsel for the respondent has also relied on the following decisions;

[1] 1994 (1) GLR 87
[2] AIR 1984 SC 38 and
[3] AIR 1989 997

6. Having heard the learned counsel for the respective parties, and considering the evidence on record, and the ratio of the judgements cited by the learned counsel for the respective parties, I am of the opinion that the impugned Award has been passed by the Labour Court considering evidence on record and in the facts and circumstances of the case and while doing so, no error has been committed by the Labour Court. The Labour Court has passed the award well within its jurisdiction. The impugned Award is just and legal and in accordance with law.

7. Over and above, it is pertinent to note that the present petition has been filed under Article 227 of the Constitution of India Challenging the impugned Award passed by the Labour Court. The scope of this Court under Article 227 of the Constitution of India has been limited as held in the case of Ouseph Mathai and others Vs. M.Abdul Khadir, reported in AIR 2002 SC 110. The power under this Article cast a duty upon the High Court to keep the inferior courts and tribunal within the limits of their authority and that they do not cross the limits, ensuring the performance of the duties by such courts and tribunal in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party. Further, in Waryan Singh Vs. Amarnath (1954 SCR 565) the Apex Court has held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law has been reiterated in Nagendra Nath

Bose v/s. Commr. of Hills Division (1958 SCR 1240). In Bhahutmal Raichand Oswal v. Laxmibai R.Tarta (AIR 1975 SC 1297) it has been held by the Apex Court that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert its into a Court of appeal when the legislature has not conferred a right of appeal. The Apex Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnam (1986 (4) SCC 447) has held that it is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could not go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Article 226 and 227 of the Constitution of India to look into the fact in the absence of clear reasons where the question depends upon the appreciation of evidence. The High Court also should not in interfere with a finding within the jurisdiction of the inferior tribunal or court except where the findings are perverse and not based on any material evidence or it resulted in manifest justice (see Trimbak Gangadhar Teland 1977 (2) SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction.

Keeping in mind the above settled proposition of law, I am of the opinion that the impugned Award is neither perverse nor based on no material and therefore, the same do not call for any interference by this Court in this writ petition. I am in total agreement with the ratio laid down by the Hon'ble Court in the decisions cited by the learned counsel for the petitioner, but the same are not helpful to the petitioner in the facts and circumstances of the present case.

8. In view of the above peculiar facts and circumstances of the case, this petition is dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

9. The petitioner is directed to comply with the Award qua back wages and pay the same to the respondent Nos.1.1 to 1.5 forthwith, if not yet paid.

(SHARAD D.DAVE,J.)

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